

SPECIAL CIVIL APPLICATION No 3705 of 1989

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

[illegible]

ARJAN GOVIND CHAIYA

STATE OF GUJARAT

MR PK SHUKLA, AGP.for respondents no.4 & 5.

Date of decision: 10/02/2000

ORAL JUDGEMENT

This petition under Article 227 of the Constitution is directed against the judgment and order dated 18.11.1988 passed by the Gujarat Revenue Tribunal whereby the tribunal dismissed the Revision Application No.43 of 1984 filed by the petitioner and confirmed the order of the Deputy Collector in Civil Appeal No. 34 of 1984 and the order of the Mamlatdar & ALT, Bhachau dated 26.4.1983.

The proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 were initiated by Mamlatdar, ALT, Bharuch and he passed the order on 26.4.1983 declaring that Govind Bhura was holding 50 Acres and 22 Gunthas as surplus land in village Ner Amarsar, Taluka Bhachau. Govind Vira had contended before the Mamlatdar & ALT that he had two major sons. He was given an opportunity to lead evidence but he did not produce ration card or any other evidence that the two sons were major as on 1.4.1976 and the Mamlatdar declared 50 acres and 22 gunthas of land as surplus. The appeal was dismissed by the Collector. The tribunal too has confirmed the findings recorded by the Mamlatdar and the Deputy Collector in the revision application.

The learned Counsel for the petitioner has contended that in fact the two sons were major. In support of his contention he relied on two certificates dated 23.4.1989 (Annexures "D" & "E" respectively) issued by Talati cum Mantri of the village stating that on verification Arjan Govind and Bhachan Govind were aged 37 and 32 respectively. However, it is not said on what basis this certificate is granted. Consequently such evidence produced for the first time in the present proceedings cannot be considered.

The learned Counsel for the petitioner then raised the alternative contention that the family of deceased Govind Vira consisted of himself, his wife and two sons and two daughters and hence they were entitled to benefit of section 6(3B) of the Act which reads as follows :

"6(3B) Where a family⁸ or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely :-

(i) minor son,

(ii) widow of a pre-deceased son,

(iii) minor son or unmarried daughter of a
pre-deceased son, where his or her mother
is dead,

such family shall be entitled to hold land in
excess of the ceiling area to the extent of
one-fifth of the ceiling area for each member in
excess five, so however that the total holding of
the family does not exceed twice the ceiling area
and in such a case, in relation to the holding of
such family, such area shall be deemed to be the
ceiling area;"

In support of his contention he cited the
decision of this Court in the case of Nathekh Khan Sajalkhan
Bihari Vs. Mamlatdar, Vadgam and others reported in
25(2) GLR 1036. However, this plea was not raised before
the Mamlatdar. The learned Counsel for the petitioner
drew my attention to the submission which is noted in the
judgment of the Collector in appeal to the effect that
benefit of section 6(3)(B) had not been given. However,
the plea was not raised before the Gujarat Revenue
Tribunal. Moreover, there is nothing on record to show
that Govind Vira had two daughters apart from two sons
who he claimed before the Mamlatdar were major sons.
Such plea which requires investigation of facts cannot be
permitted to be raised for the first time in the petition
under Article 227 of the Constitution. The findings
recorded by the Mamlatdar, Deputy Collector and the
Gujarat Revenue Tribunal are findings of facts based on
appreciation of evidence and there is no error of law
apparent on the face of the record which calls for
interference under Article 227. There is no merit in any
contention. The petition therefore fails and is
accordingly dismissed. Rule discharged. No costs.

m.m.bhatt